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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

Report of the Working Group on Enforced or Involuntary Disappearances

Addendum

Report on the visit to the Philippines by two members of the Working Group on Enforced or Involuntary Disappearances (27 August - 7 September 1990)

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INTRODUCTION

1. At the invitation of the Government of the Philippines, two members of the Working Group on Enforced or Involuntary Disappearances visited that country from 27 August to 7 September 1990.

2. During 1990 and prior to that visit, the Working Group had been in contact on several occasions with the Permanent Representative of the Philippines to the United Nations and, by letter dated 15 June 1990, it suggested to the Government that the visit take place in the period 27 August to 7 September. This suggestion was accepted by the Government.

3. At its thirtieth session in June 1990, the Working Group decided to designate Mr. Toine van Dongen and Mr. Diego García-Sayán to carry out the visit on the Group's behalf.

4. In the Philippines, the two members of the mission were received by President Corazón Aquino, the Secretary of Department of Local Government, the Secretary of Justice, the Secretary of National Defence, the Under-Secretary of Foreign Affairs, the Under-Secretary of Defence, the Solicitor General, the Chief of the Constabulary and Director General of the Integrated National Police, the Regional Commanding General and Director of the Metropolitan Police Force, the Under-Secretary for the Reserve Army and other military authorities, the Chairman and several officials responsible for the Quick Reaction Team of the Commission on Human Rights, the Chairperson of the Committees of Justice and Human Rights of the House of Representatives and the Senate, a member of the Supreme Court, members of the Presidential Commission on Human Rights, the Executive Director of the Office of the Peace Commissioner, and other local and military authorities in Malolos and Bacolod. The members of the Working Group also met with Cardinal Sin, Bishop of Manila, and other dignitaries of the Roman Catholic Church and with representatives of university and educational institutions, the bar, the media and trade unions. They further met representatives of non-governmental human rights organizations and with relatives of missing persons and witnesses to disappearances. The members of the Group visited the cities of Malolos and Bacolod. They endeavoured, within the short time available, to acquaint themselves to the maximum extent possible with the various aspects of the complex circumstances that lead to disappearances in the Philippines. To that end, they met with representatives of different sectors of the population and knowledgeable personalities with a view to obtaining an objective picture of the context, circumstances and particularities in which disappearances occur.

5. The members of the Working Group wish to express their appreciation of the valuable co-operation they received from the Government of the Philippines, its national institutions, the Catholic Church and non-governmental organizations. They wish, in particular, to thank the Assistant Secretary of the Office for Human Rights and Humanitarian Affairs of the Ministry of Foreign Affairs for her co-operation in facilitating meetings with other relevant government authorities.

6. All requests for meetings with officials were accepted and the members of the Working Group were able to carry out their mission to their entire satisfaction. The members of the mission only regret that the President of the Supreme Court, whom they had repeatedly contacted during the visit, was not able to meet with them.

I. CONTEXT OF VIOLENCE

7. The Philippines is an archipelago, made up of approximately 7,100 islands, and the complexity of its geography is reflected also in its social and political life. This framework constitutes the backdrop to the situation of human rights. A description and analysis of the current structure of violence and the recurring social and political tensions which affect this country of approximately 60 million people are crucial for understanding the human rights situation in the country.

8. The roots of the political and social violence which has been affecting the country for years are to be found in the economic and social relations prejudicial to the majority of the population and going back to the colonial period. Following the attainment of independence in the middle of this century, successive Governments were unable to make a successful frontal attack on the serious problems of poverty and landlessness. The land problem, in particular, has been a source of violent confrontation. This problem certainly underlay the social demands, underscored by armed manifestations in central Luzon at the end of the 1940s. Years later, the Communist Party of the Philippines (CPP), founded in December 1968, and its armed counterpart, the New People's Army (NPA), founded a month later, fed upon this unresolved social discontent, particularly in the rural areas.

9. President Ferdinand Marcos was overthrown on 25 February 1986, after presiding over the country's destinies for nearly 20 years. Throughout his tenure - except for a seven-year period - he ruled as a dictator, taking control of the executive and legislative as well as of the military branch of the State. The proclamation of martial law on 21 September 1972, a few months before his second presidential term was due to end, was the prelude to a clear abuse of power, corruption and violation of human rights. Mass street demonstrations had taken place months previously and with this objective element as a justification, and on the pretext that the alleged threats of the CPP/NPA had to be dealt with, martial law was declared in the enforcement of which no distinction was made between members of the CPP/NPA, political dissidents or trade union leaders.

10. The concentration of powers and the severe restrictions on the possibility of using legal machinery such as habeas corpus led to the institutionalization of arbitrary arrests, frequently developing into long periods of detention without trial. Countless presidential orders were issued on the dictator's authority and a complicated structure was erected to uphold and legitimize restrictions on the rights of individuals. The inevitable result of the practically uncontrollable powers of arrest were serious violations of the rights of those detained (including torture and other ill-treatment) together with summary executions and enforced disappearances. The latter increased in the last five years of the Marcos Government although martial law was no longer in force. With or without martial law, the form of government which had been imposed became slightly more flexible only in the last months of the Marcos régime when the people's resistance became more active.

11. Although there was some increase in the gross national product (the GNP for 1985 was 1.7 times greater than in 1971), the national income was so distributed as to produce an overall increase in poverty. Whereas in 1971 one out of every two families could be assigned to the "poverty" stratum, in 1985

three out of every five families could be considered poor. Out of every 1,000 children born alive, according to the figures for 1988, 73 died before the age of five. Only 52 per cent of the population has access to drinking water.

12. This situation was and continues to be much more serious in the rural areas where 59 per cent of the population live. In 1985, out of 10 million Filipinos constituting the economically active rural population, only one and a half million owned the land they farmed. The rest, i.e. eight and a half million, had no land and were basically tenants, sharecroppers and wage workers.

13. In recent years, agrarian reform has been a major demand of the rural poor. Analysts agree, however, that little has changed with the Comprehensive Agrarian Reform Law of 1987 and, barring major political and legal reforms, there seems little likelihood of change since under this law about 75 per cent of private lands will be excluded from the redistribution process.

14. During her presidential campaign, Corazón Aquino had called for human rights, which had been so violated during the Marcos era, to be upheld. After acceding to the presidency in 1986 she freed political prisoners and issued Executive Order No. 8 creating the Presidential Committee on Human Rights which was to investigate complaints and reports of human rights violations. Applying this approach and with this concern in mind, the Constitutional Commission, set up in 1986, gave particular attention to the question of human rights in the Constitution which it was drafting and which, after being approved by the people, came into force in 1987. Many presidential decrees of the Marcos era which permitted arbitrary detention were abrogated and measures were taken to restore habeas corpus. Freedom of the press and of speech were also restored.

15. These acts and concerns were later overshadowed, however, by a number of serious events and by certain Government decisions. Firstly, there was a disturbing increase in political assassinations attributed to members of the armed forces and particularly to paramilitary groups (vigilantes). According to certain non-governmental organizations this situation deteriorated, with many persons, including human rights activists, church workers, trade union members and peasants, allegedly becoming the victims of summary execution. According to one of these sources, there were more than 200 victims in 1989. Journalists' organizations, while admitting the positive change in the attitude of the Government with respect to the freedom of the press, point out that between January and July 1990 alone seven journalists were assassinated in different parts of the Philippines. The total number of journalists assassinated since February 1986 is 27.

16. Meanwhile, early in 1987 after the failure of the short-lived cease-fire with the NPA, the President announced that the CPP would remain illegal, which meant maintaining in force a major provision of the disputed Republic Act 1700 of the Marcos era. In one of her last presidential decrees before Congress met on 27 July 1987, the President increased the penalties for the crime of association with the NPA from a maximum of 12 years to life imprisonment.

17. The insurgence of the NPA is fomented by severe social inequalities and serious economic problems. Initially, the NPA was quite small and confined to the provinces of Tarlac and Isabela in Central Luzon. During the 1970s

the NPA grew in strength and spread to the entire country, increasing its political influence and its fire power. It is difficult to get reliable information about the present membership of the NPA but what is certain is that it operates all over the country at different levels of intensity.

18. The Working Group has received information about atrocities committed by the NPA in both urban and rural areas. The Working Group has given particular attention to reports denouncing the so-called "sparrow units", death teams composed of three persons assigned to kill soldiers or policemen in order to get possession of their weapons. According to certain non-governmental sources, in Manila alone "sparrow units" belonging to one brigade of the NPA murdered over 60 policemen and military personnel during 1989. According to military sources, from January to May 1990 the NPA killed 110 members of the military and paramilitary, 25 Philippine Constabulary (PC) officers and 26 policemen all around the country.

19. President Corazón Aquino cleared the way for negotiations between the Government on the one side and the National Democratic Front (NDF) on the other. The NDF had been created in 1973 and 13 political and trade union organizations are affiliated to it. The move led to a 60-day cease-fire which began on 10 December 1986. It did not result in a political dialogue to ensure its maintenance and extension. Following a serious incident on the Mendiola Bridge in Manila when troops opened fire on a peaceful demonstration by a peasant organization (Kilusang Magbubukid ng Pilipinas - KMP), killing at least a dozen persons, the NDF withdrew from the peace negotiations on 30 January 1987 when the 60 days had not yet even expired. Both parties resumed their military actions: while the Government declared all-out war, the NPA stepped up its offensive in the towns. More recently, the Government created the Office of the Peace Commission which has proposed shifting the emphasis of the counterinsurgency policy onto the peace process and such measures as confidence building and conflict abatement. The Office of the Peace Commission is still in action.

20. Military sources have told the Working Group that over the past two years, for the first time in two decades, there has been a decline in NPA strength. Its combatants, they say, declined in number by 8 per cent in 1988 and 14 per cent in 1989. As estimated by the Department of National Defence, the membership of the NPA at the end of 1989 totalled 18,640, the lowest figure for five years. Over the last two years, according to the same source, the number of firearms in the possession of the NPA has also fallen. All this, they say, adds up to a decrease in the offensive capacity of the NPA and a comparative increase in the capacity of the Armed Forces of the Philippines (AFP).

21. The period when martial law was in force saw considerable expansion of the resources available to the armed forces. The military budget increased by 500 per cent between 1972 and 1976 and the established strength (including the PC) rose from 60,000 to 164,000 over the same period. But the big change affecting the observance of human rights was concerned with an aspect that had and still has far-reaching implications: relations between civilians and the military. In fact, the focus of power was transferred to the military authorities, and in 1975 the police became a branch of the armed forces and was placed under the responsibility of the Ministry of Defence by order of President Marcos. Civilian control, taking also into account the overall effects of martial law, became very tenuous or completely non-existent.

22. Parallel to this, and despite the increase in economic and human resources available to the armed forces, growing use began to be made during the 1970s of paramilitary forces for counterinsurgency. The year 1970 had seen the creation of the Civilian Home Defence Forces (CHDF), which were theoretically under the control of the PC though in fact they operated as paramilitary groups with very loose discipline and almost non-existent selection procedures for their recruitment.

23. The role played by the military and by certain officers in the revolution of February 1986 raised their standing in the eyes of the population. The armed forces, which already numbered 250,000 strong, were renamed the New Armed Forces of the Philippines (NAFP), some generals were retired and young officers were promoted. The command structure was decentralized and efforts were made to improve relations with the civilian population through civic action plans and training in human rights for soldiers and policemen. The initial emphasis laid by the Government on human rights and, in particular, the attitude of officer groups unwilling to accept greater civilian control are among the factors explaining the six attempted coups d'état - some of them quite serious - that the Aquino Government had to face up to December 1989.

24. Despite the fact that the military action of the NPA does not seem to be threatening the stability of the system, the fact is that, as seen by the armed forces, insurgence continues to be the main problem for the country's security and the principal justification for the human, material and logistic resources placed at their disposal. The CPP/NPA is perceived as the factor explaining not only insurgent military actions but also manifestations of social protest and any kind of dissident activity. The application of this militarist, counterinsurgent logic to the handling of social conflict has, according to most observers, contributed to blocking political development and preventing the political parties from taking firm root despite the existence of a constitutional régime.

25. Within this context, the armed forces have promoted a counterinsurgency strategy, known as the "total approach counterinsurgency strategy". It has operated simultaneously on two fronts: firstly, direct action by military and police personnel in combat and intelligence operations; and secondly, systematic and growing use of the civilian population for security activities as part of a trend that at present lays emphasis on the Citizen Armed Forces Geographical Units (CAFGUs) (see also Chapter II, paras. 41-44). Some 90,000 persons are at present organized in these units. In addition, use is made of the Civilian Volunteer Organizations (CVOs), a type of civilian body which theoretically should be involved only in intelligence and preventive operations. As the institutional arm of counterinsurgency, there is the governmental plan called the National Reconciliation and Development Programme (NRDP), designed to provide the framework for the reintegration into society of rebel "returnees".

26. According to various sources, including, in particular, the report of the Senatorial Committee on Justice and Human Rights under the chairmanship of Senator Wigberto E. Tañada, the total approach strategy has resulted in numerous violations of human rights in the Philippines. The Committee's report states that the "total war policy has led to more intense, aggressive and at times indiscriminate use of military might, particularly fire power.

This has resulted in the unnecessary loss of lives and damage to property, as well as in the breakdown of the morale of many civilians, particularly those merely suspected of aiding guerrillas or being part of their mass base. Further, the recruitment and mobilization of civilians to participate in military operations resulted in more civilian casualties. Because of the total war policy, the accommodation of democratic dissent and respect for human rights is made more difficult." The report also states that, in attacks by the armed forces, the measures used to distinguish between combatants and civilians were inadequate and that "the use by the military of mortars, howitzers, bombs, heavy artillery and other high-powered weapons resulted not only in massive displacement of people but also in heavy damages to crops, livestock and other items of productive value ..." (Report on the Human Rights Situation in the Philippines, Senatorial Committee on Justice and Human Rights, Chairman, Senator Wigberto E. Tañada, 4 April 1990, pp. 57 and 58).

27. One of the results of the military operations carried out without adequate procedures for distinguishing between the civilian population and combatants has been the displacement of people, sometimes called "internal refugees". One case in point is Operation Thunderbolt, carried out in Negros Occidental in April 1989, and reported to have involved the shelling of civilian targets.

28. In this and other cases, the evacuation centres were unable to cope with the scale of the demand. Indeed, in this specific case, the evacuation centres in Negros Occidental recorded more than 100 children as having died of various diseases. In general, information exists on displaced persons fleeing military operations in places as far apart as Mindanao, Negros Occidental, southern Leyte, Samar, Cebu and Bohol.

29. A large number of the reports of human rights violations, including enforced disappearances, concern the CAFGUs, vigilantes and other paramilitary groups. The military and political authorities have shown themselves to be incapable or indecisive in controlling these groups, which are permitted under the law and are subject to certain regulations (as in the case of the CAFGUs), or disbanding them (as in the case of the vigilante groups which were ordered to be disbanded in a directive of President Aquino in 1988). However, not only do the CAFGUs seem to be actively involved in human rights violations but, in some cases, their very formation represents a violation of individual freedom. Some of them recruit by coercion or by threatening or murdering anyone refusing to join. In other cases, vigilante groups, such as the "greenans" in Negros Occidental, continue to operate with impunity, intimidating and even killing members of the local population, with the clear objective of gaining possession of their land and belongings.

30. In the sugar-growing areas of the country, the Special CAFGU Active Auxiliaries operate, financed by a fund created by the major plantation owners (Sugar Development Foundation, Inc. - SDFI). According to information obtained by the Senatorial Committee on Justice and Human Rights, between 72 per cent and 75 per cent of this funding is used to train and support the Special CAFGUs, which are actually becoming a sort of private army, despite the fact that they are intended to protect the public and maintain law and order. This system undoubtedly fosters social polarization and violations of the right of association and the right to strike.

31. One of the most serious factors contributing to the violation of human rights in the Philippines and, at the same time, to the reduced visibility of the authorities is unquestionably the operations of the vigilante groups. Although strictly prohibited, they continue to operate.

32. Counterinsurgency assigns to the civilian population an active role which should, in principle, be performed by the forces of law and order. The existence of rules and guidelines to ensure that the CAFGUs do not commit any excesses is a positive step, but has proved inadequate to achieve the intended objectives. As long as the counterinsurgency strategy continues to be based on the assumption that, in practice, the civilian population is to play an active and offensive role in the internal war, the authorities are shirking their responsibility to preserve law and order and a persistent source of human rights violations is gaining legitimacy.

33. In general terms, the Philippines Constitution and laws guarantee the freedom of association and the right to strike. The Philippines has also ratified the relevant International Labour Organisation (ILO) conventions. Nevertheless, many complaints have been made of violations of the rights of workers as a result of repressive actions, principally by paramilitary groups which, in some cases, have led to the enforced disappearance of the victims.

34. Although some vestiges of legislation dating from the Marcos régime and severely restricting the right to strike of "essential services" still exist, the most serious cases stem from acts of violence against leaders or members of trade union organizations suspected by the authorities of being "fronts" for the CPP/NPA. The conclusions of the 262nd Report of the Committee on Freedom of Association of the International Labour Office (ILO) at its meeting in February 1989, later approved by the Governing Body of ILO at its 242nd session (February-March 1989), are clear and unequivocal. The report states that "the Committee deplores the increase in anti-union violence demonstrated by numerous deaths and disappearances documented by the complainants and presses the Government to do all in its power to curb criminality by certain members of the police and the armed forces, to adopt vigorous measures to dismantle the vigilante groups" (262nd Report, para. 310). Subsequently, in the light of further complaints received, the same Committee in its 268tn Report (November 1989) urged the Philippines' Government "to adopt vigorous measures to dismantle the vigilante groups" (268th Report, para. 534).

II. INSTITUTIONAL AND LEGAL ASPECTS

A. Anti-insurgency policies and law enforcement agencies: information received from the Government

1. Anti-insurgency policies and strategies

35. In connection with the context of violence as described in the preceding chapter, it is pertinent to refer now to the policies and strategies of the Government vis-à-vis the insurgency and other situations that would eventually produce violence. In its meetings with members of the Department of National Defence and high-ranking military and police authorities, the members of the Working Group received information on the matter, contained in an information kit prepared for the Working Group by the Department of National Defence. It includes a definition of national security agreed at the eighth cabinet meeting which stresses that, in times of instability, development and security

concerns overlap and, as a consequence, national policies should address the problem of security and the need for development in a "total approach" covering political action, economic progress, social justice and the protection of law-abiding segments of the population, democratic institutions and processes. The document also stresses the role of governmental institutions and officials in counterinsurgency, suggesting that it should be a more active one.

36. In general, the view of the military authorities is that the new democracy in the Philippines "is being exploited by the CPP/NPA/NDF to infiltrate the different sectors of society, and their targets for propaganda include: the peasants, labourers, professionals, students and youths, and the media, government and religious sectors". The military authorities also feel that there is a lack of legal weapons to fight insurgency, and that "the laws on detention are the same for ordinary criminals as well as subversives and rebels, making it difficult to send the latter to jail."

37. According to these views, the defence strategy of the military authorities includes not only the participation of civilians in the counterinsurgency activities but also the participation of the military forces in a number of activities usually reserved for the civil authorities and officials. A three-tiered defence system is described in which the Military Mobile Forces (MMF) are in charge of the "clearing phase", which aims at breaking off or neutralizing the hold or the influence of the insurgency over the residents in a certain area; the Territorial Forces - the Philippine Constabulary (PC), the Integrated National Police (INP) and the Citizens Armed Forces Geographical Units (CAFGUs) have the task of securing the cleared area after the MMF move out (the "holding phase"); and the Civilian Volunteer Organizations (CVOs) and committed citizens are requested to participate with the Territorial Forces in the consolidation phase.

38. The whole system is, at the local level, under the command or supervision of the armed forces and it is supported by the local authorities, which also play a supervisory role in relation to the civil forces.

39. In meetings held with military and police authorities the members of the Working Group were informed that the police, which under the previous régime was merged with the Integrated National Police and the whole placed under the Ministry of National Defence, continued to be an integral part of the Armed Forces of the Philippines.

40. In this connection, the members of the Working Group inquired, in particular, about the nature, composition and function of the CAFGUs and CVOs, since those forces were supposed to be integrated with volunteer reservists on active duty and civilians, and they had been reported responsible for many cases of disappearances.

2. Citizen Armed Forces Geographical Units (CAFGUs)

41. According to information received, the creation of a citizens' army was mandated by the 1987 Constitution and was officially established in July 1987 as an auxiliary reserve unit to the regular armed forces. But it was only in 1988 that recruitment for the CAFGUs began, immediately after the dissolution of the Civilian Home Defence Forces (CHDF) (officially completed in July 1988) and the domestic and international outcry over abuses by

vigilante groups. Executive Order No. 264 of 25 July 1987 providing for the citizen armed forces states, in its section 1, that it is composed of all reservists - officers and enlisted, even on inactive status - and it specifies that "all able bodied citizens shall undergo military training after which they shall become reservists with appropriate rank". Section 2 states that the Secretary of National Defence will organize CAFGUs throughout the country.

42. The implementing rules and regulations of Executive Order No. 264 indicate that CAFGUs will be categorized into CAFGU (inactive) and CAFGU Active Auxiliary (CAA), and that all CAAs will be attached to a regular AFP formation in the active force, which will exercise control and supervision over the CAAs concerned.

43. A copy of a document containing guidelines on the Special CAFGU Active Auxiliary (SCAA) was also provided to the members of the Working Group. The guidelines indicate that all qualified volunteer reservists gainfully employed by duly accredited business establishments within a particular locality may be called upon under selective mobilization to render auxiliary service to meet local emergency situations, such as civil disturbances, natural calamities and insurgency. Like the regular CAA, the SCAA complements regular AFP units as active auxiliary. Members are provided with military-type weapons for the purpose, are trained under the CAA training programme and must be on the payroll of the companies or institutions requesting their activation.

44. Other provisions of the guidelines indicate that all SCAAs will be subject to military laws, rules and regulations, that the tactical employment of the SCAAs will be limited to the companies' territory, that they will be utilized principally for the defence of the business establishments and that they will not be allowed to operate independently from the local tactical or area security force.

3. Civilian Volunteer Organizations (CVOs)

45. The Working Group was informed that the Civilian Volunteer Organizations (CVOs) had been created in view of the increase in the number of terrorist incidents and the spontaneous proliferation, in many parts of the country, of groups of civilians for community self-defence. There was an inter-agency sub-committee on Citizens' Volunteer Groups composed of representatives from the Armed Forces of the Philippines, Department of National Defence, Department of Local Government and the Commission on Human Rights. The Department of Local Government led the implementation of the guidelines for the CVOs which establish that they must be properly organized and shall be exclusively for self-defence and protection. Membership in the organization must be purely voluntary and members must be thoroughly screened to weed out criminal elements.

46. Civilian volunteer organizations are encouraged to support the military and the police by collecting intelligence information; giving early warning; conducting ronda and similar neighbourhood watch activities; helping in public information; providing emergency safety, medical and transportation services; and supporting community development projects.

47. Normally, the volunteer organizations shall be under local civil government supervision and their activities must be sanctioned by the barangay, and municipal authorities, and co-ordinated with the local military and police authorities.

48. The CVOs are integrated within the National Reconciliation and Development Programme (NRDP), which aims, inter alia, at giving particular attention to the specific needs of rebel returnees (RR) and their families. RRs are those members of the insurgent forces who were granted amnesty by Proclamation No. 180 and accepted to return within the terms of that amnesty. According to information received from the authorities, many RRs are recruited for CVO groups, and they constitute an important element for intelligence information.

49. The military supervision over the CVOs includes the conduct of training in matters such as: (a) due process according to Philippine laws; (b) human rights and (c) survival and self-defence techniques, including the use of fire-arms by those authorized.

B. National institutions for the protection of human rights

1. Commission on Human Rights

50. In its sections 17 and 18, Article XIII, the 1987 Constitution provides for the establishment of a Commission on Human Rights as an independent office entrusted, inter alia, to investigate complaints of human rights violations; provide appropriate legal measures for the protection of human rights; provide for preventive measures and legal aid services for the underprivileged whose human rights have been violated or need protection; exercise power over visitation rights to jails, prisons or detention facilities; establish research, education and information programmes to enhance respect for the primacy of human rights; recommend to the Congress measures to promote human rights; and monitor the Government's compliance with international treaty obligations on human rights. The Commission has the power to adopt its own operational guidelines and rules of procedure; to request the assistance of any department, office or agency in the performance of its functions; and to appoint its officers and employees in accordance with law.

51. As a result of a series of dialogues with the military forces, the Commission issued on 6 May 1988 its Guidelines on visitation and the conduct of investigation, arrest, detention and related operations for strict implementation by all law enforcement agencies. These guidelines are concerned with the co-operation that those agencies must extend to the members of the Commission and/or their authorized representatives; the safety and security of complainants and witnesses in human rights cases; the free access of members of the family, legal counsel and spiritual advisers to detained persons; the presentation, on a quarterly basis, of an official report on any arrest, detention, investigation or similar operations to the Commission; and the duty to avoid the use of unnecessary force in effecting arrests, conducting investigations and during detention.

52. The Commission established a Witness Protection Programme wherein a safe shelter and subsistence allowance are granted for the duration of the hearing or for as long as it may be deemed necessary, and a Jail Visitation Programme which responds to reports of torture or maltreatment of detainees, complaints of illegal arrest or detention, or lack of adequate basic facilities.

53. The attention of the members of the Working Group was drawn to the fact that the Commission was empowered to carry out investigations, but has no prosecuting powers. If the Commission found that violations of human rights had been committed, it had to refer the case to the competent judge or court. The Commission is also empowered to issue clearances for military or police officers in relation to their personal human rights records, which should be clean as a pre-condition for their promotion.

2. Presidential Committee on Human Rights

54. As a result of a dialogue between the President of the Philippines and non-governmental organizations concerned with disappearances on 13 December 1988, Administrative Order No. 101 creating the Presidential Committee on Human Rights was issued. The Committee is charged with monitoring the human rights situation in the country and advising the President on what necessary and appropriate action should be taken. It would also assist relatives of disappeared person in their search for their loved ones. Complaints on human rights violations may also be filed with the Committee. It is chaired by the Secretary of Justice and it includes among its members the Chairman of the Commission on Human Rights (PCHR), the President's legal counsel, representatives of the Department of National Defence, the Department of Foreign Affairs and the Department of Justice, a representative each from the Senate and the House of Representatives and two delegates from non-governmental human rights organizations, i.e. the Philippine Alliance of Human Rights Advocates (PAHRA) and the Free Legal Assistance Group (FLAG). Because of its composition, the Presidential Committee can order the various departments to undertake the necessary steps to speed up cases under investigation whether by the military, the Commission on Human Rights or the Department of Justice.

55. The members of the Working Group attended a meeting of the Presidential Committee and held meetings with some of its members. During these meetings, the members of the Working Group were informed that the Commission was not empowered to investigate cases and that its search for victims of disappearances was limited by its lack of powers and resources. However, the Presidential Committee could constitute a valid forum for discussion of human rights problems and for exchange of information between government representatives and the non-governmental organizations concerned with human rights.

3. Parliamentary Committees on Justice and Human Rights

56. The members of the Working Group held meetings with the Chairman of the Committee on Justice and Human Rights of the Senate and the Chairman of the Committee on Justice and Human Rights of the House of Representatives. Both committees are mainly concerned with legislation related to human rights matters but they also conduct investigations on the situation of human rights in the Philippines, which contributes to public information and to a search

for legislative, judicial or other measures to improve the situation. Among the legislative initiatives of the House Committee is, the elaboration of a Human Rights Code as a further development of Articles III and XIII of the Constitution, which contain the "Bill of Civil and Political Rights" and the principles of "Social Justice and Human Rights". The information provided by both members of Congress was taken into account in the preparation of this report.

57. A public inquiry on the situation of human rights in the Philippines was conducted by the Committee on Justice and Human Rights of the Senate, following initiatives sponsored by several members of the Congress in relation to reports received from different groups of the population. The Committee was headed by Senator Wigberto E. Tañada. In the course of the inquiry, the Committee listened to testimony from 76 victims of human rights violations, their relatives and witnesses to the incidents. In 12 public hearings covering the 12 regions of the country, it collected documents supportive of complaints and received reports of investigations by government bodies, fact-finding missions reports, studies and views from individual sources, as well as clippings of relevant news items, editorials and media articles.

4. Office of the Peace Commissioner

58. The Office of the Peace Commissioner, an advisory body under the Office of the President, does research on how to extend peace to all the territory of the country and eliminate subversion. Questions such as human rights violations and the impact of militarization in subversion-affected areas are among its recent areas of work. Among its objectives are the reconceptualization of internal security, the need to generate a "critical mass" of people who will consciously undertake a campaign of public awareness about the root cause of instability and the resulting lack of internal security in society.

59. The Working Group was informed that the Office of the Peace Commissioner was conducting studies that placed the emphasis of the counterinsurgency policy on the peace process and conflict abatement measures, which included disbanding the CAFGUs and reorienting the whole concept of civilian defence along the lines of economic security and popular participation, rather than armed response.

C. Views expressed by non-governmental organizations on national policies and institutions and the situation of human rights

60. Some non-governmental organizations alleged that the armed conflict between government forces and the NPA moulded the political life of the Philippines and oriented government policies at the national, regional and local levels.

61. Some NGOs stressed the fact that the armed forces, including the different law-enforcement agencies integrated into them, enjoyed a considerable degree of autonomy and decision-making apparently not subject to supervision by the civil authorities or accountability before the competent civil institutions. In fact, the increasing militarization of many areas of the country and the enlargement of the forces under military control did not seem to be justified by an increase in the activites of subversive groups.

62. It was alleged that, in the context of the "national security" concept, the military forces had been following a practice of publicly labelling organizations and individuals engaged in political, trade union, human rights, humanitarian or other activities as actual or potential collaborators of the guerrillas, so that they had become legitimate "targets" in the "total war" against armed rebels.

63. According to reports from several organizations and witnesses met by the members of the Working Group during its visit to the Philippines, the CAFGUs were used by military forces as a front for human rights violations. They had become notorious for violating human rights, which provided a convenient excuse for the military to disown any responsibility. Those groups, usually acting in conjunction with regular military units and motivated by extreme anti-communist indoctrination, were the major perpetrators of human rights violations including many disappearances and summary executions.

64. It was further alleged that CAFGUs were theoretically supposed to be formed locally and to be voluntary; however, people did not want to join CAFGUs in their own areas because this involved a serious risk of being identified and targeted by insurgents. Consequently, CAFGUs were transferred to areas where they could not be identified and where they were more likely to enjoy impunity if they committed violations of human rights.

65. Some non-governmental organizations stated that the blurring of the distinction between State and private security forces, based on the guidelines authorizing volunteer reservists gainfully employed by private business establishments to complement regular AFP units as CAFGU Active Auxiliary, was at the core of the problem of politically motivated violence. This was so by virtue of the fact that they were paid by the hacienda owners and that their detachments were located on hacienda property; they shared some of the attributes of a landlord's private army and were only partially subject to military discipline and surveillance.

66. In the view of the Government CVOs are essential to maintaining internal security. Nevertheless, various sources have expressed fear that they may quickly deteriorate into armed vigilante groups like those of the Marcos era. Such groups, now banned under Article XVI, section 24 of the Constitution, were once responsible for blatant human rights violations. It was also argued that CVOs further contributed to the process of militarization of Philippine society.

67. All the various non-governmental organizations and lawyers met by the members of the Working Group in the Philippines provided information regarding the role and action of the Philippine Commission on Human Rights. They suggested that the Commission could be made more effective if certain constraints were eliminated. For example:

(a) The Commission's procedure introduce an additional complexity into the already complex mechanism of criminal justice. They establish a series of requirements that complainants and witnesses must fulfil without offering even the prospect of remedies available in civil or criminal courts;

(b) The procedures involve considerable personal risk, because complainants and witnesses are requested to provide public testimony, their names and addresses, and to appear repeatedly before hearings at personal expense. Such hearings do not have legal validity in subsequent proceedings before the courts. The Commission has, in fact, established quasi-judicial procedures which directly confront a complainant with agents of the State, a frightening situation to be in. The Commission's role is not that of an ombudsman or a representative of victims of human rights violations, but that of an arbitrator with very limited power to provide remedies or to redress situations in which human rights abuses have been committed;

(c) The Commission has not established an effective programme of witness protection whereas witnesses have often been subjected to harassment, death threats or violence by the named respondents or their agents.

68. Non-governmental organizations informed the members of the Working Group that victims and relatives believed that several investigations made by members of the Commission in cases reported to it were only bureaucratic and did not try to redress situations, clarify cases or identify persons responsible for human rights violations. Elemental steps of investigation, such as questioning witnesses in the place where the reported violations occurred were not taken by the members of the Commission. Moreover, witnesses felt that the Commission would not provide protection for them but would instead channel the witnesses' information to those forces that had probably committed the human rights violations. As a consequence, witnesses were reluctant to provide testimony before the Commission.

D. Legislation considered relevant to the practice of disappearance and the role of the judiciary

69. The present administration has taken several legislative measures that improve human rights, such as including in the 1987 Constitution fundamental human rights and guarantees enshrined in international instruments.

70. The Constitution further establishes that "no person shall be held to answer for a criminal offence without due process of law" (section 14 (11)), that "the privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when public safety requires it" (section 15); and that "no person shall be detained solely by reasons of his political beliefs and aspirations" (section 18 (1)). The 1987 Constitution also abolished the death penalty.

71. During this administration, the Philippines acceded to important international human rights instruments, such as the International Covenant on Civil and Political Rights and its Optional Protocol and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1. Republic Act No. 1700

72. Within the context of violence described in Chapter I, some existing legislation was reported as limiting the enjoyment of the rights enshrined by the Constitution and the international instruments. Some provisions of Republic Act No. 1700 (the anti-subversion law), amended by Executive Order No. 276, were mentioned as one example of such legislation.

73. Republic Act No. 1700, in its section 4, declares illegal and outlawed the Communist Party of the Philippines and any other organization having the same purpose, as well as their successors, and establishes penalty for "whoever knowingly, wilfully and by overt acts affiliates himself with, becomes or remains a member of the Communist Party of the Philippines and/or its successor or any subversive association as defined in sections 2 and 3" (this section includes among the outlawed organizations the New People's Army and its political arm and any successors of such organizations).

74. It was alleged that the military and security forces gave Republic Act No. 1700, as amended, a broad interpretation covering many humanitarian or human rights non-governmental organizations whose aims and objectives were in no way linked to those of guerrilla groups. According to testimonies received in the Philippines, there was a list of 36 non-governmental organizations branded by the military as front organizations of the Communist Party which included several Catholic Church institutions and movements, several trade union organizations, research and studies institutions, human rights and humanitarian organizations, and cultural and educational groups. The above-mentioned report of the Committee on Justice and Human Rights of the Senate includes, among its findings and conclusions, the following:

> "Government officials, particularly the military, were found to have made loose and at times deliberate statements linking many cause-oriented groups to outlawed organizations such as the NDF-CPP/NPA. As a result of said labelling, such groups were placed in danger of being targeted by military, paramilitary, and anti-communist vigilante groups".

75. A non-governmental organization provided the members of the Working Group with a copy of a letter it had sent to President Aquino which claimed that Executive Order No. 276 amending Republic Act No. 1700, by removing the element of foreign power or foreign support made the crime of subversion not very different from that of rebellion but much broader in scope and application, and that, by repealing section 5 of the original act which prescribed the legal procedures to be followed in the filing of a complaint for the crime of subversion, encouraged hasty filing of such complaints. It concluded that, since subversion was punishable by life imprisonment and rebellion was no longer a capital offence; since the element of foreign support had been removed from the crime of subversion; and since the only difference between rebellion and subversion now appeared to be that rebellion would involve deceit, force, violence, etc., then it was probable that cases of subversion rather than rebellion would be hastily filed against those suspected of participation in the insurgency.

76. It is further alleged that this conclusion was reinforced by the elimination of the procedural safeguards provided by section 5, prescribing that no prosecution for subversion shall be made unless the prosecutor or fiscal should first certify under oath that he had conducted a preliminary investigation with notice to the accused and with all facilities for the accused to submit his or her own evidence.

2. Presidential Decree No. 1850

77. Presidential Decree No. 1850, promulgated under former President Marcos and never repealed, was considered one of the most significant obstacles to the effective prosecution of members of the security forces for alleged human rights violations. It was believed that the Government's failure to repeal or significantly amend the decree contradicted its claim that it would not tolerate human rights violations by members of the security forces and contributed to a political climate in which widespread violations were more likely to occur.

78. Presidential Decree No. 1850 establishes that "uniformed members of the Integrated National Police who commit any crime or offence cognizable by the civil courts shall henceforth be exclusively tried by courts martial" and that "all persons subject to military law under Article 2 of the aforecited Articles of War who commit any crime or offence shall be exclusively tried by courts-martial or their case disposed of under the said Articles of War."

79. In addition, the members of the Working Group learned from military authorities that members of CAFGU were also covered by Presidential Decree No. 1850, as amended, because they were part of the military forces. Therefore, they are also judged by courts martial.

80. An additional decree promulgated by President Marcos, PD 1822, empowers the President to waive PD 1850 in selected instances where it is deemed appropriate for a military defendant to be tried by a civil court. President Aquino has exercised this power in a few cases, following a procedure that involves asking the advice of the AFP whether the waiver should indeed be granted. Some government officials, including members of the Commission on Human Rights, claim that such waivers are automatically granted.

81. Both houses of Congress filed a bill repealing PD 1850. It was approved by the House of Representatives on 12 October 1989 and by the Senate on 18 October 1989. On 21 December 1989, however, President Aquino vetoed the bill, citing the violent coup d'état staged in December 1989 and the subsequent proclamation of the state of emergency. The President cited the advice of Secretary of Defence, Fidel Ramos and Armed Forces Chief of Staff, General Renato de Villa. SMe wrote: "I find good cause for the Secretary of National Defence and the Chief of Staff of the Armed Forces of the Philippines in recommending the veto of the enrolled bill". General de Villa had argued that the proposed bill would have divested military courts of jurisdiction to try the military personnel involved in the attempted coup d'état of December 1989.

82. According to the view expressed by NGOs, President Aquino's veto did not discuss the adverse consequences of this decree on those seeking justice in relation to violations of human rights. Furthermore, lawyers met by the members of the Working Group during its visit pointed out that the act filed by the Congress repealing PD 1850 would not have had any effect on the trial of military personnel involved in the attempted coup d'état of December 1989, because it provided for acts of mutiny and sedition to remain under the jurisdiction of courts martial.

3. Executive Order No. 272

83. The attention of the members of the Working Group was also drawn to Executive Order No. 272, which amended Article 125 of the Revised Penal Code by doubling the period required to bring an arrested person to court from the original six hours for minor offences to twelve hours, from nine hours for less grave offences to 18 hours and from 18 hours for grave offences to 36 hours. Non-governmental organizations alleged that the effect of Executive Order No. 272 was to encourage hasty and ill-considered arrests in violation of the constitutional safeguards of individual liberty, and to delay the contacts between the defence counsel and the detainee and his right to speedy trial. They further claimed that a legal detention presupposed that the suspect had either been caught in flagrante delicto or was arrested under a warrant issued after proper preliminary examination of the complainant and his witnesses and proof of justiciable course to the satisfaction of the judge concerned, so that there was no need to keep detainees for prolonged periods before surrendering them to the proper court.

84. The consequences of this Executive Order are closely linked to recent decisions of the Supreme Court on warrantless arrests, which will be referred to in the next section of this chapter.

E. Role of the judiciary and recent Supreme Court decisions that could have a bearing on disappearances

85. The right to the protection of habeas corpus is established in the Constitution of the Philippines. In Section 5, Article VIII the Constitution states: "The Supreme Court shall have the following powers: (1) Exercise original jurisdiction ... over petitions for ... habeas corpus". The suspension of the privilege of the writ of habeas corpus is a faculty of the President for cases of lawless violence, invasion or rebellion. However,

> "The Supreme Court may review, in appropriate proceedings filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.
>
> "A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.
>
> "The suspension of the privilege of the writ [of habeas corpus] shall apply only to persons judicially charged for rebellion or offences inherent in or directly connected with invasion.
>
> "During the suspension of the privilege of the writ of habeas corpus, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released." (Section 18, Article VII).

86. In relation to military tribunals, the members of the Working Group were informed that the Supreme Court does not have supervisory powers over courts martial, which are not part of the judicial system. They are directly under the Chief of Staff of the Armed Forces, who is the reviewing authority for decisions of the courts martial.

87. Members of the judiciary and the Congress, lawyers and non-governmental organizations referred extensively to the role of the judiciary in cases of human rights violations, in particular disappearances. They referred mainly to the effectiveness of habeas corpus, to the trends observed in recent decisions of the Supreme Court in relation to arrest without warrant and to military tribunals and impunity in cases of serious violations of human rights.

1. Arrests without warrant

88. Several individuals and organizations met by the members of the Working Group in the Philippines expressed concern over recent decisions of the Supreme Court that allow for more flexible mechanisms of detention, so enlarging the powers of the law-enforcement agencies to arrest people without warrant issued by a competent judicial authority.

89. It was alleged that arrest procedures were frequently violated and detainees were often held for periods in excess of legally permissible limits and also in secret or incommunicado detention. The Tañada Committee (see para. 57) reports that according to several witnesses so-called "safehouses" are still being used by government agents for interrogation, torture and clandestine detention of suspects. In the Working Group's experience such places are in themselves highly conducive to disappearances. According to other interlocutors, their existence has never been proven.

90. As most of the disappearances were preceded by arrest by military or police forces or other forces under the Minister of Defence, including volunteer citizen forces, the fact that warrantless arrest occurred so often increased the risk of disappearance. Also, detention for long periods, even months (exceeding the 36 hours maximum period admitted by Executive Order No. 272) increased the risk of disappearance, since some persons whose detention had been originally acknowledged disappeared and officers having custody over them simply claimed that the missing person had been released.

91. All non-governmental organizations expressed concern over the decision of the Supreme Court, promulgated on 9 July 1990, which allows warrantless arrest on mere suspicion of involvement in rebellion or subversion. In Umil v. Ramos (GR No. 81567) the Supreme Court interpreted existing legislation in a way that any person may be arrested without a court order if he is suspected of being a subversive or rebel. The interpretative basis for this conclusion is that subversion and rebellion are "continuing offences" enabling the ground of flagrante delicto to be applied extensively to legitimize any arrest and, as a result, actually curtailing the right of habeas corpus.

92. Two dissenting opinions by Supreme Court magistrates on the same cases reflect the concern expressed by non-governmental organizations and members of the Congress. In both of them it is stated that the ruling of the Supreme Court justifies the arrest without warrant of any person at any time as long as the authorities say he has been placed under surveillance on suspicion of the offence, which constitutes a dangerous doctrine.

93. According to statements heard by the members of the Working Group during their visit, through this decision the Court rendered meaningless the exercise of freedom of speech, expression, press and peaceful assembly, and the right to form unions, associations and societies; someone exercising those rights would leave himself open to suspicion of involvement in rebellion or subversion. An even more chilling effect of that decision was that it expunged the guarantee of presumption of innocence, which would create, among law-enforcement officials, an atmosphere of approval for all their actions, thus increasing the risk of disappearances. In fact, this decision might be interpreted by soldiers, policemen, CAFGUs or vigilantes as tacit endorsement of their activities, regardless of how arbitrary or illegal they were.

94. The members of the Working Group also received copies of another ruling of the Supreme Court previous to the one mentioned above, which fits into the same pattern in relation to warrantless arrests.

95. In the Guazon v. de Villa case the Supreme Court considered the question of legality of "areal target zonings" or "saturation drives", in which military and police forces would enter an urban community, usually in the middle of the night or early morning, wake up the people and take them out of their houses to an open space where a hooded informer would point at the persons he thought were subversives or rebels. These people would be taken to police precincts for interrogation without any warrant. In the above-mentioned case (GR No. 80508), the Supreme Court, although admitting that some violations were actually committed during "saturation drives", stated that the police needed to make its presence visible in troubled areas and that a show of force was sometimes needed, as long as the rights of people were protected. However, one of the magistrates pointed out in his dissenting opinion that "saturation drives" came under the concept of "fishing expeditions" stigmatized by law and that the Supreme Court was reintroducing the practice of "zona" used by the previous régime during martial law.

96. It was stated by one NGO that recent decisions of the Supreme Court, all of them promulgated within less than a year, constituted a judicial declaration of martial law which wiped out all constitutional guarantees of human rights and fundamental freedoms. This virtual suspension of rights and guarantees was decided not by the Executive or the military, but by the highest court supposed to be the maximum safeguard of such rights and guarantees.

97. As a consequence of the above-mentioned decisions the writ of habeas corpus was no longer available in cases of illegal arrest, which again increased the risk of disappearance.

2. Writs of habeaus corpus

98. Rule 102 of the Revised Rules of Court establishes that the writ of habeas corpus "shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty"; that it may be granted by the Supreme Court or the Court of Appeals or any of their members at any moment and, if granted, it will be enforceable anywhere in the Philippines. It may also be granted by a Court of First Instance or a judge thereof and, in this case, it shall be enforceable only within his judicial district. The writ will not be allowed if the person alleged to be restrained of his liberty

is in custody of an officer under process issued by a competent court or judge or by virtue of a judgement or order of a competent court. If the jurisdiction appears after the writ is allowed, the person will not be discharged by reason of any informality or defect in the process, judgement or order.

99. In relation to habeas corpus as a remedy for human rights violations, it was alleged that it had rarely been effective in the Philippines as a method of locating missing persons. In general, many lawyers were reluctant to file habeas corpus writs, possibly for fear of reprisals or because they had doubts about its effectiveness.

100. The procedural norms with regard to witnesses to detention and disappearances required that an eye-witness sign a sworn affidavit concerning the incident and then take the initiative to appear in court to repeat the statement. Even when sworn affidavits had been filed before the court to the effect that an unlawful arrest or a disappearance had been carried out, the matter was not accorded priority by the court. Witnesses were generally unwilling to appear before the courts to give evidence for fear of reprisals, since they were often subjected to death threats, persecution or even murder by those accused of having committed serious violations of human rights. That was also the case for relatives and legal counsel.

101. Furthermore, the courts seemed to feel powerless in dealing with habeas corpus filed on behalf of disappeared persons. The Supreme Court itself stated in relation to a habeas corpus writ filed on behalf of missing persons that:

> "The Court regrets that it cannot grant the relief sought by petitioners. It is not the repository of all remedies for every grievance ... (The Court) is not a trier of facts, nor does it have the means and facilities to conduct such investigation of the ... whereabouts and fate of the desaparecidos" (Dizon v. Eduardo, 158 SERA, 470, 488).

102. It was reported that the judiciary had, in general, a tendency to act upon a "presumption that the statements of law-enforcement agencies must be accepted without criticism or doubt. Such agencies enjoyed a presumption of regularity" which put the burden of proof on the complainant. Habeas corpus petitions could only be successful in cases in which there were witnesses who were able and willing to identify the abductors; the petitions could be easily frustrated by the military simply denying the existence of the person. To prove that a person was being held and detained illegally was very difficult, in particular because of the intimidation of witnesses and the petitioners' limited resources and access to information.

103. In a case which occurred in 1990, the Regional Trial Court stated that the petition would only be granted if it could be proved that the victims were in military custody and that the testimony of the sole witness who appeared was insufficient. It also decided that since the victim's relatives had filed kidnapping charges against the person alleged to have been involved in the abduction, the proper action was no longer a habeas corpus petition, but a criminal action. It was alleged that this decision undermined the purpose of habeas corpus writs.

104. In another recent case, that of María Nonna Santa Clara and Angelina Llenaresas, the Regional Trial Court in Manila submitted to the Supreme Court a decision in favour of the petitioners. The Supreme Court could have required the military authorities to account for the fate of the two missing persons, but instead referred the case to the Commission on Human Rights.

105. In certain cases where the disappeared person was believed arrested, the Supreme Court allowed for the reception of evidence, either by a lower court or by an Associate Justice acting as a Court-appointed Commissioner; however, it went no further than receiving evidence. The Court usually dismissed a habeas corpus petition without prejudice to filing another one or referred the petition to the Commission on Human Rights for further investigation. Only in exceptional cases did the Court refer the petition to the Secretary of Justice for criminal prosecution.

106. It was also alleged that delays in deciding the cases were not uncommon and were particularly tragic when dealing with disappearances, which demanded the speedy resolution of cases to ensure the safety of the victim. In the case of María Nonna Santa Clara and Angelina Llenaresas, the Supreme Court took six months to decide that the case should be investigated by the Commission of Human Rights. During this period an investigation to determine the whereabouts of the two missing women could have been made and their safety could have been more efficiently preserved.

107. Several witnesses stated that as a result of recent decisions of the Supreme Court, sometimes based on previous jurisprudence of the Marcos régime, the effectiveness of habeas corpus petitions in relation to unlawful arrest and detention had been undermined and frustrated to the point that habeas corpus at present appeared not to be a legal remedy for the practice of disappearances.

3. The question of impunity

108. Numerous witnesses and relatives alleged that most of the disappearances had been committed by individuals belonging to military or police forces, CAFGUs or members of armed groups operating with the acquiescence of local military commanders. Some of them alleged having witnessed the arrest of the missing persons, others stated having seen a disappeared person in a detention camp run by such forces or groups. Several affidavits by former detainees or witnesses to the arrest or detention of missing persons contained statements on the involvement of military, police or paramilitary forces in the disappearances.

109. Some NGOs and individuals stated that, although evidence of such responsibility was abundant, only a few members of the military or police forces were found guilty of human rights related offences. In fact, only low-level members of such forces were exceptionally punished. Never were ranking officers found guilty of a serious offence committed under the present administration.

110. An impediment to bringing to justice military personnel accused of human rights offences was, according to these sources, Presidential Decree No. 1850, which exempted members of the military from prosecution in civil courts, regardless of the offence.

111. According to reports received from NGOs and individuals, military tribunals showed an unjustifiable leniency when dealing with offences committed during counterinsurgency activities even if they amounted to very serious human rights violations. In the context of the "total war" approach to counterinsurgency, such activities covered a very wide range of military operations such as checkpoints; "saturation drives" and arrest; detention or persecution of persons labelled by the military as supporters of insurgent groups, such as members of trade union, religious, humanitarian or human rights organizations, legal counsel or witnesses to complaints of human rights violations, etc.

112. Lawyers stated that they did not believe they could receive justice in a military tribunal; some simply declined to participate because they considered that it was not worth investing their efforts and risking their lives in such circumstances.

113. In cases of disappearance the forces or individuals responsible were often identified. However, the military authorities would deny the detention while witnesses to the arrest or detention would be harassed or threatened with death. Under such circumstances, witnesses would not appear at courts martial and the prosecution of those responsible would be only a theoretical remedy. In exceptional cases in which evidence was abundant (often because of its gravity and public denunciation through the press), courts martial also acquitted those identified as responsible.

114. Information received from the Minister of Defence on the status of human rights complaints referred to the armed forces indicates that, of 68 cases closed or terminated up to 17 January 1990, 15 were declared without merit, 10 with insufficient evidence; 10 were closed for lack of interest to prosecute; 4 were amicably settled; 6 were withdrawn due to death of respondent; 2 became moot and academic; in 3 cases the complainant executed an affidavit of desistence; in 8 cases persons were discharged from the service; in 3 cases the persons were demoted; in 1 case the person was reprimanded administratively and in 7 cases the persons were acquitted.

III. THE PHENOMENON OF DISAPPEARANCE

115. Two hundred and thirty one cases of disappearance allegedly occurred during the period 1975 to 1980. The persons who disappeared were reported to be farmers, students, lawyers, journalists and economists, among others. The arrests were carried out by armed men belonging to an identified military organization or to a police unit such as the Philippine Constabulary (PC), the Central Intelligence Unit (CSU), the military police (MIG), the Integrated National Police (INP), the Advanced Commando Post (ACP) and other organizations. In some cases the arrests were attributed to "military men", "policemen", "soldiers" or "government troops".

116. Disappearances increased from 42 in 1982 to 145 in 1983, the years 1984 and 1985 saw a total of 158 and 189 disappearances respectively.

117. In 1984 the abuses on the part of the Government were directed against farmers, workers, cultural minorities, the urban poor, students, some critical sectors of the church, journalists and lawyers.

118. In 1985 the detention and subsequent disappearance of union organizers, members of church groups, social workers and human rights workers were also registered. Among the last group were reported cases of missing persons associated with the Task Force Detainees of the Philippines (TFDP).

119. The cases of disappearance reported as occurring since 1986 generally concerned young men living in rural and urban areas, described as members of legally constituted student, labour, religious, political or human rights organizations which the military authorities have claimed are a front for the outlawed Communist Party of the Philippines (CPP) and its armed wing, the New People's Army (NPA). Among the groups most commonly targeted were said to be the New National Alliance, Kilusang Mayo Uno (KMU - First of May Labour Movement), KADENA (Youth for Democracy and Nationalism), and the National Federation of Sugar Workers-Food and General Trade (NFSW-FGT). The main forces held responsible were the Civilian Home Defence Force (CHDF), different infantry battalions, men in civilian clothes believed to be members of the Western Police District (WPD), the Philippines Constabulary, Alsa Masa ("Masses Arise", a paramilitary group reportedly active in the military's armed operations against the NPA in the Buenavista area, Aguasan del Norte), the Armed Forces of the Philippines, the Capital Regional Command, the Civilian Armed Forces Geographical Units (CAFGUs) and members of the Military Intelligence Group (MIG).

A. Cases of disappearance in the Working Group files

120. During their visit to the Philippines, the members of the Working Group received information from relatives, organizations of relatives of missing persons, human rights organizations and lawyers. Written testimony and reports on cases transmitted for the first time to the Group and further details on cases submitted in the past were provided. The total number of outstanding cases transmitted by the Group to the Government of the Philippines at the time of completion of this report was 497 out of a total of 595 cases transmitted.

1. Statistics, analysis and description

121. Since the establishment of the Working Group in 1980, it has received reports and information on enforced or involuntary disappearances from local non-governmental organizations, NGOs abroad and private individuals, generally relatives of the persons reported missing.

122. The figures in the Working Group's files are broken down on the basis of the cases transmitted by it to the Government of the Philippines (see graphs).

123. Disappearances occur virtually throughout the country, although some provinces are more affected than others. Thus, it was found that 91 reported cases had occurred in Luzon, 167 in Mindanao, 27 in Negros Occidental and 8 in Bulacan. The figures for the other provinces are lower.

124. The disappearances appear to occur in both urban and rural areas. It was found that 28 cases occurred in Manila, 33 in Bulanao, 11 in Sitio Bongsaran, 8 in Gagaputan, 7 in Marcopa, 7 in Santa Ana and 9 in Butuan. As for the

place of arrest, in 122 cases the arrest occurred in public places, in 42 at home, in 25 in the house of a friend/relative and in 8 cases on police and military premises. In the other cases, no particulars were provided.

125. With regard to occupations, the missing persons - men between 21 and 50 years of age, for the most part - belonged to different social strata; they were agricultural and manual workers, farmers, students, lawyers, journalists, economists, househelpers, urban poor, church workers, etc. It was also found that in one particular year, 1985, the reported cases of missing persons mainly concerned: union organizers, members of church groups, social workers and human rights workers. The years from 1986 to 1990 witnessed the arrest and subsequent disappearance of students and members of labour, social and human rights organizations branded as "front organizations" for the outlawed Communist Party of the Philippines (see supra para. 119).

126. As for the forces regarded as responsible for disappearances, the Group noted the following particulars in the cases reported:

Forces responsible	Number of cases
Armed forces	226
Police	16
Paramilitary forces	14
Agents in plain clothes	62
Civilian Home Defence Force	66
Alsa Masa	12
CAFGUs	16
Philippine Constabulary	76
Different infantry battalions	150

127. The Working Group also received reports of cases of disappearance in which the perpetrators were identified as belonging to fanatic religious groups like the Greenans, Pulahans, Putians and Itumans who live in very remote areas in the hinterland and are normally armed with bolos (machetes).

2. Protection of witnesses and remedies available to families of disappeared persons

128. The members of the mission received and listened to testimony from relatives and witnesses of arrests in which they expressed their reluctance to report cases or to testify before the courts because they were afraid of eprisals, to which witnesses are very often subjected.

129. Some NGOs informed the Working Group about proposals concerning the implementation of a witness protection programme, such as:

(a) The transfer by the Supreme Court of hearings on habeas corpus petitions to a court in another town/area to protect witnesses, relatives, lawyers and even the judge from harassment;

(b) The activities of the Commission on Human Rights should also be geared to the protection of the witnesses and relatives; it should investigate reports of threats and harassment;

(c) Disciplinary measures should be taken against military personnel alleged to be directly involved in a disappearance.

130. The Working Group noted that most of the remedies available to families of disappeared persons were rendered ineffectual by existing obstacles.

131. In theory, families of disappeared persons could file criminal charges against the officers or agents suspected of perpetrating an involuntary disappearance. In reality, however, this remedy was not readily enforceable, because of (a) the existence of Presidential Decree No. 1850, as amended; and (b) other practical considerations.

132. Aside from Presidential Decree No. 1850, families of disappeared persons would find it difficult to file criminal complaints against the alleged perpetrators. It is often difficult to establish the identities of the officers, agents and soldiers involved in a disappearance. Military units are not forthcoming in providing information that could lead to the proper investigation of a disappearance. In addition, witnesses are often afraid to testify, for fear of reprisals.

133. Families of missing persons could also file civil suits to recover damages, presuming that (a) the perpetrators have been identified; and (b) witnesses and evidence exist although, due to financial costs, families are discouraged from utilizing this remedy.

134. Families of disappeared persons could file administrative complaints before agencies such as the National Police Commission (for policemen) and the Office of the Inspector General (for soldiers). Policemen and soldiers, however, are more likely to influence proceedings on these levels and witnesses are more afraid to testify at such proceedings. Seldom do they result in the dismissal from service of guilty soldiers and policemen.

135. Families of disappeared persons could also file complaints before the Commission on Human Rights and they could also seek the assistance of the Presidential Human Rights Committee; however, neither of them possess prosecutorial or enforcement powers.

B. Non-governmental human rights organizations in the Philippines

136. The members of the Working Group met with several representatives of the Philippines human rights community under the auspices of the Philippine Alliance for Human Rights Advocates (PAHRA). They also listened to relatives of victims of disappearances and witnesses to the incidents, under the auspices of Alyansa ng Mamamayan Para sa Pantaong Karapatan (ALMMA - Citizens' Alliance for Human Rights), Families of Victims of Involuntary Disappearances (FIND), Task Force Detainees-National (TFD-National), Task Force Detainees-National Capital Region (TFD-NCR), Human Rights Alliance in Negros (HRAN), National Federation of Sugar Workers-Food and General Trade (NFSW-FGT) and Kilusang Mayo Uno (KMU). They also met with members of the Regional Council on Human Rights, Free Legal Assistance Group (FLAG), and Protestant Lawyers League of the Philippines.

137. Some of the organizations said that they had been "red-labelled" ever since they started operating, during the Marcos dictatorship; this had continued with the new Government. Because of that, many human rights workers had been arrested, tortured, "salvaged" (summarily executed), and many had disappeared. The persistence of such a trend under a democratic government constituted a major concern for NGOs.

138. As mentioned in Senator Tañada's report, "the most telling example of insecurity among NGO members is found in the unabated killings and disappearances of labor leaders and human rights lawyers" who, according to the Task Force Detainees of the Philippines (TFDP), "have become an endangered species". TFDP reported the killing of six human rights lawyers belonging to KMU, the Free Legal Assistance Group in different regions and BAYAN; this number appeared to be more than during the entire Marcos era.

139. The NGOs concern about the threat that "red-labelling" posed to their security was illustrated by an incident involving the Catholic Church. On 11 July 1989, the Catholic Bishops Conference of the Philippines (CBCP) issued a statement concerning the definition of human rights violations. In that statement the CBCP deplored the "way in which human rights abuses were talked about and reported" and referred to "the manipulative use of human rights violations", specifically "the reprobation and publicizing by one political bloc of violations of human rights ... merely to blacken the political image of the other". It continued:

> "Over the past three years, we had ample evidence of this kind of treatment of human rights abuses in one-sided reporting of violations; all too often, the crimes of the military are played up extravagantly and similar crimes by the National People's Army (NPA) are either passed over in silence or muted down or explained away .... It is often for this reason too that we have been wary of peace groups or peace councils that have an eye open for the peace-destroying aggression of only one side in the conflict currently raging in the country, but close the other eye to the violence of the group they 'sympathize with'".

PAHRA replied that "the statement carries a brand of red-labelling characteristic, as expected, there are quite clear accusations of human rights groups as being pro-communist. Yet the document has conveniently refrained from naming any of those groups". [...] "The implications of such red-labelling which worry [PAHRA] most, however, are twofold: its effects on the human rights workers and its effects on the human rights movement itself." According to PAHRA, "the CBCP's official baptism of these workers as communist sympathizers will expose their lives to dangers greater than what they typically are already experiencing". Cardinal Sin confirmed directly to members of the mission that the CBCP's statement still reflected the position of the Church.

140. In Bacolod, Negros Occidental, the Working Group was informed about cases of priests who had reportedly been labelled communists in pamphlets allegedly distributed by the military.

141. Concern has been expressed over the fact that certain members of targeted organizations have been placed on the military's "order of battle" which means that without being given the opportunity to answer the allegation that they are rebels or rebel-sympathizers, they have been killed, arrested or disappeared.

C. Meetings with government officials

142. As mentioned earlier in the report (see para. 4) during their visit to the Philippines, the members of the Working Group had occasion to meet the highest authorities of the State.

143. The following paragraphs contain a summary of the meetings held by the Working Group with those government officials who provided comprehensive information concerning different structural and institutional aspects related to disappearances. A number of major points conveyed to the members of the Working Group by the highest representatives of the State are reflected in other parts of the report, where their significance, placed in the respective contextual framework, will be better understood. This is particularly true for the Secretary of Local Government, the Secretary of Justice, the Chief of the Constabulary and the Director General of the Integrated National Police, the Regional Commanding General and Director of the Metropolitan Police Force and the Executive Director of the Office of the Peace Commissioner.

144. The President of the Republic granted the members of the Working Group an audience, for which the Group wishes to express its deep appreciation. She stressed that her Government was committed to the respect of human rights and that proof of such a policy was the openness with which her Government welcomed missions of inquiry on human rights. She said that the Philippines was an open society and that they did not have anything to conceal. Unfortunately, her country had serious problems of poverty, injustice and violence which were at the root of political problems like the insurgency conflict.

145. One way to tackle the problem of poverty, the President said, was through the implementation of development projects in peace zones. In this connection, the President invited the members of the Working Group to visit one of these development areas; unfortunately, time constraints prevented such a visit.

1. Department of National Defence

146. At the meeting with the Under-Secretary of Defence, the Under-Secretary for the Reserve Army, the DCS for Civil Military Operations, the Chief of the Philippine Constabulary and a military attorney, the members of the Working Group were briefed on the situation of violence in the Philippines. The causes of violence were given as poverty, the inequitable distribution of wealth, injustice and corruption in the Government. Against this background, the National People's Army (NPA) was trying to convince the populace that it was the real representative of the Filipino people. The military noted that the Armed Forces of the Philippines were entrusted by the Constitution "to preserve order and the integrity of the nation"; the NPA's refusal to acknowledge the Philippines Constitution demonstrated that it was not ready to negotiate.

147. The members of the Working Group were told that the "total approach strategy" launched by the Government to fight insurgency involved not only a military approach but also a civilian, an economic and a political one. "Total war" was a concept used by the media, not by the Government, and derived from a statement by President Aquino in 1980 that she intended to use the "full force of the Government" in fighting the insurgency.

148. On reports of cases of disappearance, the members of the Working Group were informed that the cases reported to the armed forces were always investigated and that two kinds of actions were undertaken: on one hand, steps were taken to trace the missing persons and, on the other, criminal and administrative charges were instituted. As pointed out in the information kit prepared by the Department of National Defence for the Working Group, the military acted according to the definition of violation of human rights contained in the Constitution which covers violations of human rights committed by both the rebels and the Government unlike "human rights advocates and groups [who] reason out that they subscribe to a notion which they claim is well understood in international circles, 'and which has been guiding the United Nations'".

149. The information kit also paid special attention to false cases of disappearance filed with the Commission of Human Rights. According to this report, "the Commission is continuously inquiring into the veracity of a host of other similar cases which may turn out to be mere bare allegations unsupported by any scintilla of evidence made by hostile elements aimed at discrediting the AFP, and ultimately the Philippine Government".

150. The armed forces clearly stated that they intended to punish any abuse or violation of human rights committed by military personnel. In a memorandum of December 1988 addressed by the Secretary of National Defence to the Chief of Staff of the AFP concerning:

> "Respect for human rights and improvement of discipline in the AFP", he reiterated his "Office's long-standing directive to take the necessary bold steps to weed out and punish, as warranted by proper investigation, not only the military personnel who directly commit the acts complained of but also, with equal vigour, the commanders who countenance such abuse by way of summarily dropping the case, intimidating the complainant and his witnesses, 'cover-up' of the incidents, failure to report to superior authorities, and/or sheer inaction on the complaint".

He also stressed the instruction that:

> "the commanding officer of an erring military personnel shall be similarly held accountable either as conduct unbecoming an officer or as accessory after the fact in cases where he refuses to act, delays action or otherwise aids and abets the wrongdoing of his subordinate which is the subject of a valid complaint. It is of course understood that due process shall be observed in order to protect the innocent officer from harassment".

2. Presidential Committee on Human Rights

151. The members of the Working Group had occasion to attend the monthly meeting of this Committee, which the current Secretary of Justice decided to activate in January 1990. As mentioned during the meeting, this body had emerged as a result of the Government's concern over the phenomenon of disappearance. The Commission's definition of disappearance, however, differed from that of both the NGOs and the Government. The latter stated that pursuant to the definition of human rights in the Philippines' Constitution, not only the Government was the one to be held responsible for violations but several armed groups as well. The NGOs, on the other hand, abided only by the international definition of disappearance. During the meeting, a definition covering violations of human rights committed by both sides in the conflict was agreed. The NGOs said that they would agree to include those committed by insurgent groups in order to come to an operational agreement but that they would continue to adhere to the international definition, since violations of human rights committed by non-governmental forces were matters that should be redressed by the competent national institutions and by the government of the country concerned.

3. Commission on Human Rights

152. The members of the Working Group met with four members of the Commission who explained to them the Commission's activities in relation to disappearances, which were carried out by a Quick Reaction Team (QRT) and a Task Force on Disappearances. The Commission had in each of the 12 regions 2 special investigators devoted solely to investigating disappearances. They were able to investigate 83 out of 400 cases in the Commission's files. Some of the cases were unsuccessful either because there were no witnesses or because the relatives of the disappeared person had lost interest or had finally resigned themselves to the fact that their disappeared relative was perhaps already dead. In some cases the Commission's investigators were unable to locate the relative of the missing person. Notwithstanding the meagre results obtained, the Commission focused their attention on disappearances. They had created their own forensic team and, in addition, had a multi-sectoral group which was composed of the Medical Action Group (MAG), PAHRA, the National Bureau of Investigation (NEI) which had a complete laboratory, and some expert anthropologists from the University of the Philippines (UP). Their task was to identify bodies found in graves; if the corpses were found to be those of missing persons, this information would be included in a report. The identification process was difficult and lengthy when the crimes had been committed long ago, during the Marcos régime.

153. The Commission's main constraint was lack of funds. If they wanted to organize information campaigns or, as had been proposed, to undertake an in-depth study of the cases and circumstances of disappearances, as had been done in Argentina, they needed funding.

154. Lately, a number of disappearances had occurred which had been responded to by the QRT. As soon as the disappearance was reported, the Director for Investigation sent out the QRT to investigate. Their presence was very important because cases of disappearances usually started with the person being apprehended. If this was prolonged and if no one intervened,

disappearance was a likely result. Through such a presence the authority or the person concerned would know that somebody had knowledge of the detention and was interested in the protection of the detainee.

155. Another important question was how to secure the release of the detainees. The Commission had observed that if someone was taken in by a legal authority he was invariably released, but it often happened that after one or two days the body of the detainee was found elsewhere or not found at all, so becoming a case of disappearance. The Commission wanted to establish procedures for the release of detainees which would clearly indicate who was responsible for the release and to whom the detainee should be handed (a relative, a lawyer, or the CHR) so that the official forces under whose custody the detainee had been held could not claim that they were not responsible for the disappearance of the person.

IV. CONCLUDING OBSERVATIONS

156. Amidst tense political circumstances, exacerbated by the crisis in the Gulf, two members of the Working Group on Enforced or Involuntary Disappearances paid a visit to the Philippines in the period under review. They are indebted to the Government of President Corazón Aquino not only for having extended an invitation to the Group in the first place, but also for the generous co-operation received during the mission itself. Apart from the Working Group, the Special Rapporteur on Torture has likewise visited the country, as have various non-governmental organizations, while several recent reports have been published.

157. A much-observed sequence of developments leads up to the occurrence of disappearances, starting with poverty and social injustice. The persistence of those conditions sooner or later induces structured opposition. Sustained inequality breeds insurgence, just as subversion leads to militarization and repression. Counterinsurgency, as a rule, is conducive to human rights violations, provoking even more terror from armed opponents. Soon, an entire country is swept into a spiral of violence, from which escape is invariably difficult. The Philippines is no exception.

158. As explained in Chapter I, the New People's Army, feeding on unresolved social discontent, particularly over land ownership, began a violent campaign, which over the last 20 years has exacted a heavy toll, both in terms of human lives and of economic cost. According to unofficial sources, "sparrow units" belonging to the NPA killed over 60 policemen and soldiers in Manila during 1989 alone. According to military sources, from January to May 1990 the NPA killed 110 members of the military and paramilitary forces, 25 members of the Philippine Constabulary and 26 policemen all around the country.

159. Immediately after seizing power, President Marcos responded with massive militarization, raising the armed forces to its present strength, as well as with violent repression. The Working Group has repeatedly stated that, in its experience, disappearances are seen as a convenient method of suppressing opposition and stifling dissent. Again, the Philippines is no exception. The Marcos régime evidently used disappearances as one of its preferred techniques of combating social upheaval, armed or unarmed. The figures speak for themselves: according to the Working Group's data, 426 persons disappeared while Ferdinand Marcos was in power; informed human rights groups put the figure at 882.

160. While analysing the mechanics of the situation of disappearances up until 1986 would be primarily an exercise of historical interest, the present Government does have lessons to learn from what transpired before it came to power. And in any event, it has the formidable task of bringing all the cases of disappearance to light.

161. Disappearances are continuing under the present Government, despite a comprehensive policy towards promotion and protection of human rights. Since 1986, that policy has led to the inclusion of an impeccable catalogue of human rights in the Constitution, to ratification by the Philippines of the most important human rights instruments, to the formation of a national Commission for Human Rights as well as a Presidential Committee on Human Rights. In addition, training programmes on the subject have been instituted to the benefit of both the army and the police. As a corollary effort, the President has established an Office of the Peace Commission while also undertaking efforts to defuse political violence through dialogue and persuasion and to reintegrate insurgents into normal life, a policy that has already paid considerable dividends.

162. The position of the Philippines is not an enviable one, as the country is beset by a multitude of other problems: a heavily mortgaged economy, soaring oil prices, population growth and unemployment, recently compounded by returnees from the Gulf. Also, in the last few years, a climate of political tension has developed, manifested by repeated coup attempts. At the same time, rebel forces, although significantly reduced in numbers, continue to wreak havoc in the countryside as well as in the capital. Such a climate is hardly conducive to the protection of human rights. Serious violations continue to occur. The total number of disappearances for the country since 1986 now stands at 169, while the annexed graph shows an alarming increase. In 1990 alone, the Group has carried out over 37 urgent actions. Also, it must be acknowledged that the Group's data probably do not reflect the true dimensions of the situation, which according to informed sources is much graver.

163. The question arises of why disappearances continue to occur. In the Working Group's view, at least three contributing, and mutually reinforcing, factors may be identified. The Government would seem to have more control over some factors than over others. First, powers of arrest have been widened: the armed forces, the national police, the civil defence forces (CAFGUs) as well as civil volunteers can all apprehend a suspect. Secondly, arrests in general have been facilitated by recent Supreme Court rulings that, understandably, have provoked the ire of many human rights observers within and outside the Philippines. The Court has in effect stated that rebellion, subversion and related offences are so-called "continuing crimes" - meaning that their perpetrators are constantly in flagrante delicto - and that no judicial warrant is needed for arresting persons suspected of them, mere suspicion being enough (see para. 91). Thirdly, the circle of potential victims of arrest has widened through a practice favoured in military circles and popularly known as "red-labelling": lists circulated describing non-governmental organizations of different orientation - including trade unions - as "front organizations" of the outlawed Communist Party of the Philippines. In addition, the same suspicion is raised against anybody critical towards government policy, or, more to the point, towards the armed forces.

164. When a large number of people can arrest a large number of other people for offences that are hardly circumscribed, merely on the basis of a suspicion with political underpinnings, abuses are almost bound to occur. In the Philippines, the predicament is compounded by long delays between arrest and indictment, sometimes far in excess of legal requirements (requirements, incidentally, which have been eased by the present Government). Under such circumstances, the dividing line between a lawful and a legitimate arrest becomes hard to observe. Disappearances and concomitant violations such as torture and killings are likely to occur. Other human rights come under pressure as well, notably freedom of the press and trade union rights, despite the Government's espousal of full freedom in these respects.

165. The almost autonomous power of the military, so portrayed by a starkly candid press, is another factor that has a bearing on the incidence of disappearance. Despite the Government's contention that the number of subversives has been drastically reduced as a result of its policies, the levels of the armed forces and the police are at virtually the same strength as in the Marcos days. Moreover, the armed forces are now being reinforced with a civilian defence force, the CAFGUs, which will soon reach more than 100,000 troops. Analysts question the need to maintain that level of militarization. This is all the more disquieting, since on the basis of what it has found, the Group can but conclude that most cases of disappearance are to be ascribed to members of the military, the police and vigilante groups. Under the present Government, CAFGUs and, to a lesser extent, civilian volunteer groups should be added.

166. Impunity is no doubt a contributing factor. Unfortunately, the members of the mission did not come away impressed by the modus operandi of the administration of military justice. In view of the overwhelming testimonies on involvement of members of the public forces in cases of disappearance and other human rights abuses, the number of convictions is surprisingly low. Impunity breeds contempt for the law. Soldiers, policemen, CAFGUs or vigilantes - spurred on, as some observers fear, by the cited Supreme Court rulings - may become even more irresponsible when they are not held to account before a court of law. Meanwhile, of course, the reverse is also true: subversive groups, for their part, may become all the more brazen when their acts of violence can be repeated unpunished.

167. Habeas corpus is one of the most powerful tools for determining the fate or whereabouts of a missing person; it may also help to contain the phenomenon of disappearance per se. The remedy exists as a procedure under Philippine law, but it is marred by a number of deficiencies. First, it depends ultimately on co-operation by the arresting authorities, which in cases of disappearance is often elusive if not illusory. In this regard, the practice in the Philippines conforms to the Working Group's experience as regards other countries. Secondly, procedural obstacles and reticence on the part of the courts make it almost impossible to avail oneself of this remedy effectively (see paras. 98-107). Thirdly, witnesses are often in fear of reprisals, which makes relatives even less eager to resort to habeas corpus.

168. The Government is in a position to take decisive action to redress the influence of some of these factors. Although it was widely acknowledged to the members of the mission that the Government had indeed taken important

steps, the prevailing view was that it had not done enough to curtail abuses by public forces and that more assertive efforts were required to improve the overall human rights climate. The Government's policy was perceived as decidedly leaning towards law and order and as being in some ways even prejudicial to the protection of the individual, and that consequently its human rights policy needed to be reoriented. The Working Group feels comfortable with that view and it recommends that attention should be given to the following options, which are intended to assist the Government.

(a) As too much power in the area of maintenance of public order appears to be concentrated in the hands of one single body, it has been suggested to the Working Group that the national police should be severed from the army and be put under a different cabinet minister. The Working Group supports that view; it understands that legislation to that effect is in the process of being implemented;

(b) From many quarters - the International Labour Organisation, the Peace Commission, the Senate Committee on Justice and Human Rights, various non-governmental organizations - it has been recommended that the CAFGUs and similar outfits should be disbanded. That would be the Group's preferred option as well. In any event, their deployment should be restricted to defensive action under the continuous supervision of army personnel; strict discipline should be enforced;

(c) In case the Supreme Court has no immediate occasion to review its recent rulings on warrantless arrest and so-called saturation drives, the Government should introduce legislation to narrow powers of arrest by strictly circumscribing which category of public official may arrest civilians for which category of offences;

(d) At present, CAFGUs fall under the jurisdiction of military courts. The Government should change that. Likewise, legislation should be introduced that would allow military and police personnel to be tried by civil courts for all offences involving civilians;

(e) The Government should prosecute those responsible for disappearances to the full extent of the law and require that severe disciplinary measures be taken against officers who have failed to enforce adequate measures to prevent disappearances;

(f) The Government should actively fight against the practice of "red-labelling", particularly by the military, as it leads to polarization and confrontation. Rather, the Government may wish to dispel the atmosphere of mutual distrust between human rights groups and the military establishment. The Catholic Bishops Conference of the Philippines does not seem to have played a useful role in this regard. The dialogue between the armed forces and the NGOs ought to be strengthened. Floating contacts in the Presidential Committee on Human Rights do not suffice. Human rights groups in the Philippines are already working under considerable strain, and in fact the members of the mission were impressed with their stamina and encouraged by their dedication;

(g) In order to facilitate the search for missing persons, regional and central registers of arrest should be established and be accessible to interested parties, including NGOs. All military camps and headquarters should be asked to provide periodically updated listings of all detainees under their custody. The Departments of National Defence and of Justice must investigate reports on suspected safehouses and take appropriate action. The Philippine Commission on Human Rights may be empowered to make unannounced spot-checks into places of detention;

(h) The Government should even more vigorously pursue the clarification of disappearances. Human rights groups should be more closely brought in to the search for missing persons and the identification of bodies discovered. Relatives should be given appropriate financial help to cover the cost of their search;

(i) The Government should initiate a thorough overhaul of both the law and the practice of habeas corpus in order to expedite the procedure and make it more effective;

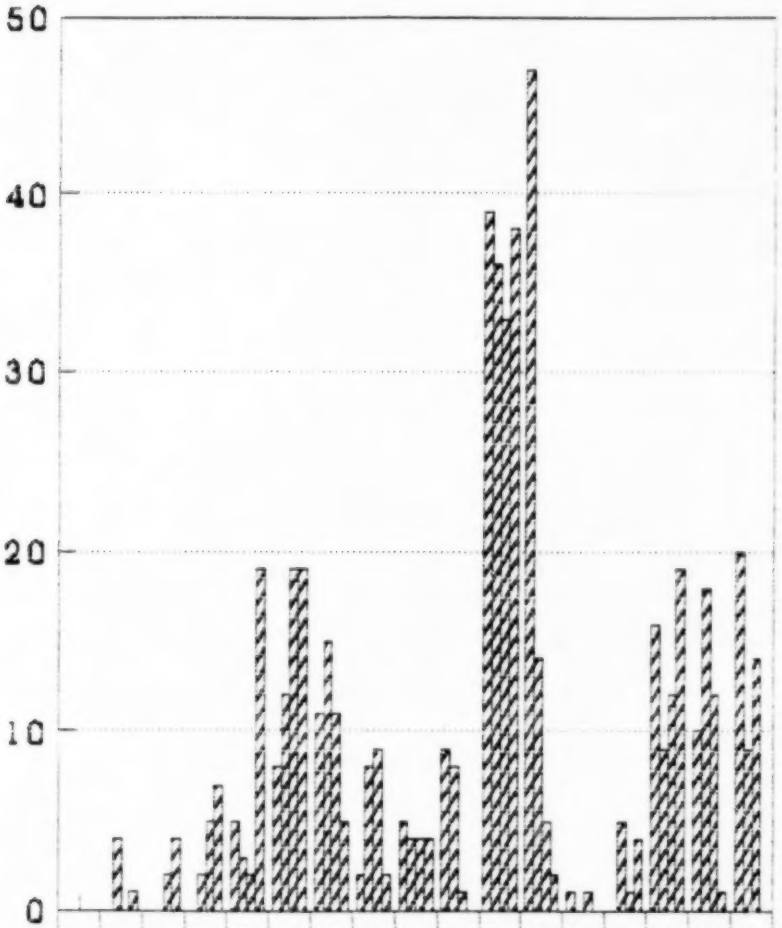
(j) Protection of witnesses is a matter which deserves the Government's attention, in view of intimidation, harassment and reprisals carried out against them pending hearings by courts or other official bodies (see paras. 128-135). Reference is made here to resolution 1990/76 of the United Nations Commission on Human Rights.

169. The Philippine Commission on Human Rights, for its part, may wish to secure more confidentiality for complainants and extend adequate protection to witnesses. On the whole, the Commission might benefit from re-examining its methods of work with a view to gaining the confidence of the general public, for credibility is vital to the protection function of the Commission. On the other hand, the infrastructure of the Commission should be strengthened. The members of the mission were duly impressed with the arrangement between the Commission and the military, giving the former a voice in the promotion of army personnel, a feature probably unrivalled anywhere else.

170. Parliament can play an assertive role in moving the Government towards a more decisive human rights policy. The report of the Tañada Committee is an excellent example of how this might be done. The Group was impressed with pending legislation that would establish a Human Rights Code; it deserves wide political support.

171. President Corazón Aquino acknowledged to the members of the mission that grave human rights problems persisted in her country, but that she was willing to face up to them. That task is going to take a lot of effort and deserves to be sustained by the international community.

DISAPPEARANCES IN THE PHILIPPINES OVER THE PERIOD 1974-1990



	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90
Quarter 1					5	8	11	2	5	9	39	47	1		16	10	20
Quarter 2		4		2	3	12	15	8	4	8	36	14		5	9	18	9
Quarter 3			2	5	2	19	11	9	4	1	33	5	1	1	12	12	14
Quarter 4		1	4	7	19	19	5	2	4		38	2		4	19	1	